

**OPINION
55-121**

March 24, 1955 (OPINION)

TAXATION

RE: Exemptions - Property Purchased by Lodge Under Contract for Deed

We have your letter requesting an opinion as to whether or not the exemption from real property taxation for lodges and like organizations provided in section 57-0208(11) of the N.D.R.C. of 1943 applies to property which is being purchased under a contract for deed.

You state that the Veterans of Foreign Wars Post of Beulah, North Dakota, has possession of property which it is purchasing under a contract for deed, and that a warranty deed is to be received upon payment of the full amount of the purchase price.

Section 57-0208(11) provides as follows:

"Real and personal property owned by lodges, chapters, commanderies, consistories, farmers' clubs, commercial clubs, and like organizations, and associations, grand or subordinate, not organized for profit, and used by them for places of meeting and for conducting their business and ceremonies, and all real and personal property owned by any fraternity, sorority, or organization of college students if such property shall be used exclusively for such purposes;"

We believe that this section can be held to exempt the real and personal property owned by such a post or club, provided that such property shall be used exclusively for places of meeting and for conducting their business and ceremonies. See State V. Packard, 35 N.D. 298, 160 N.W. 150.

It seems to us that the question involved here amounts to this: Is the term "owner: as used in section 57-0208(11) broad enough to include the vendee under a land contract which is actually using the lands for purposes that would entitle it to exemption if it is properly to be considered the owner of the property?

It seems to us that it is now fairly well established in this state that the vendee in possession under a land contract that obligates it to pay the purchase money is an owner within the meaning of the exemption statute. Such a contract clearly contemplates that the vendee eventually acquires the legal title and gives it the right by continuing its payments ultimately to demand such title from the vendor. The retention of the title in the vendor is merely a security device. The vendee assumes all the burden of ownership.

We realize, of course, that as a general proposition a grant of exemption from taxation is never presumed, on the contrary, in all cases of doubt as to the legislative intention or as to the inclusion of particular property within the terms of the statute, the

presumption is in favor of the taxing power and the burden is on the claimant to establish clearly his right to exemption.

Nevertheless, it is our opinion that the Veterans of Foreign Wars Post, to which you refer, if it has a contract for deed to the premises in question, it is a sufficient owner to entitle it to the benefit of the exemption hereinbefore referred to. We hold this because it seems now to be the rule in this state, to all intents and purposes, that the vendee is as much an owner under his contract for deed as he would be if he held the legal title and had given a mortgage to the premises.

In our judgment it was the intention of the Legislature to place more emphasis upon the use to which the property was put than the holding of a fee simple title to the same.

Therefore, it is our opinion that the Post in question is entitled to the exemption hereinbefore referred to because of the fact that it holds the equitable title to the lands in question, the legal title being held by the vendor as trustee for the use and benefit of said Post.

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Attorney General